Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 80-409

SUPREME COURT OF THE UNITED STATES
October Term, 1980

Norman C. Thomas, Petitioner

vs.

United States of America, et al Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
to the Eighth Circuit

Petitioner's Reply to Respondent's Memorandum

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TABLE OF AUTHORITIES

CONSTITUTION:

Article 1, Section 9 ..... page 1
Sixteenth Amendment ..... page 1, 2

CASES:

Pollock v. Farmers Loan & Trust,
157 U.S. 429 ..... page 1
Brushaber v. Union Pacific R.R.,
240 U.S. 1 ..... page 1, 2, 3

REPLY TO RESPONDENTS MEMORANDUM

Petitioner seeks this Court's review of the lower court's decision, in which while enforcing an Internal Revenue Service's civil summons, has left unsettled a dispute of the constitutionality of an act of Congress.

Petitioner has brought forth the showing that a tax on compensation for labor is a direct tax, subject to the apportionment requirement of Article 1, Section 9, of the United States Constitution. In support of this argument, Petitioner has relied on the decisions of this court in the cases of *Pollock v. Farmers Loan and Trust Co.*, 157 U.S. 429; and also *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1.

Respondent has offered no challenge to the fact that the tax on compensation for labor is a direct tax. Rather, the respondent alleges that the apportionment requirement of Article 1, Section 9, of the U.S. Constitution was eliminated with the Sixteenth Amendment of the Constitution. This allegation is totally without foundation, as this argument has already been dismissed by this court in the case of *Brushaber v. Union Pacific R.R.*, supra.

The text of the "Opinion of the Court" in the *Brushaber Case* makes it clear beyond debate that the Sixteenth Amendment does not purport to authorize a direct tax without apportionment. In the words of this court, this argument was viewed as an "erroneous assumption":

> "...The various propositions are so intermingled as to cause it to be difficult to classify

them. We are of the opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is a power to levy an income tax which although direct should not be subject to the regulation of apportionment to all other direct taxes. And the far-reaching effect of this *erroneous assumption* will be made clear by generalizing the many contentions..." (Emphasis added).
Brushshaber v. Union Pacific R.R., p. 10, 11

Also, at pages 18 and 19 in the *Brushaber Case*, this Court reiterates the opinion that the Sixteenth Amendment does not create a taxation power which authorizes a direct tax without apportionment:

"...Second, that the contention that the Amendment treats a tax on income as a direct tax although it is relieved of apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct thus destroying the two great classifications which have been recognized and enforced from the beginning, is also *wholly without foundation* since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income be derived, *forbids* the application to such taxes of the rule applied in the *Pollock Case* by which alone such taxes were removed from the great class of excise, duties and imposts subject to the rule of uniformity and

were placed under the other or direct class..." (Emphasis added) *Brushaber v. Union Pacific R.R.* p.18, 19.

With consideration of the facts petitioned to the Court, there would be no enlightenment to Petitioner or Respondent, nor would the Constitution be served or strengthened by the denial of the petition for writ of certiorari.

Respectfully submitted,

_____

Norman C. Thomas, pro se

PROOF OF SERVICE

I, Norman C. Thomas, petitioner herein, by support of affidavit, hereby certify that on the _____ day of November, 1980, I served copies of the foregoing Reply to Respondents Memorandum on the parties thereto as follows:

1. On the United States, by mailing a copy by certified mail to Terry Pechota, U.S. Attorney, 515 Ninth Street, Rapid City, South Dakota 57701, and by mailing a copy certified mail to the Solicitor General, Department of Justice, Washington, D.C. 20530.
2. On the Internal Revenue Service, by mailing 3 copies by certified mail to M. Carr Ferguson, Assistant Attorney General, Tax Division, Department of Justice, Washington, D.C. 20530.

AFFIDAVIT

I, Norman C. Thomas, being duly sworn upon my oath, depose and swear that on this _____ day of November, 1980, I did accomplish the action described in the foregoing statement.

_____
Norman C. Thomas, Affiant

State of South Dakota)
) ss
County of Pennington)

Subscribed and sworn to before me this _____ day of November, 1980.

(SEAL) _____
Notary Public
My Commission expires: _____